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IN THE

Supreme Court of the United States

OCTOBER TERM, 1963

No. 1074

TOM BROWN, et al,

Petitioners,

versus

RICHARD E. BROWN, JR., Administrator
DIVISION OF EMPLOYMENT SECURITY
DEPARTMENT OF LABOR
STATE OF LOUISIANA

and

CROWN ZELLERBACH CORPORATION
Bogalusa Mill Division,

Respondents.

On Petition for a Writ of Certiorari to the Supreme Court of the State of Louisiana.

BRIEF FOR RESPONDENT IN OPPOSITION CROWN ZELLERBACH CORPORATION,

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May , 1964

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HAUSER PRINTING CO., INC., NEW ORLEANS

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Opinions Below

The opinion of the Court of Appeal, First Circuit, State of Louisiana (App. A16 of Petition) is reported at 158 So. 2d 305. The opinion of the Supreme Court of the State of Louisiana (App. A23 of Petition) is reported officially at 245 La. 639, and unofficially at 160 So. 2d 227.

Jurisdiction

This Honorable Court is without jurisdiction in this matter for the following reasons:

1. Petitioners have totally ignored the provisions of Rule 23 (b) (f) of the Rules of this Court, and fail to make any affirmative showing that any federal question was timely or properly presented for determination by the Courts of Louisiana.

2. Petitioners did not in fact raise any federal question in any of the courts below. The petition for judicial review in Twenty-Second Judicial District Court, State of Louisiana, raises no federal questions and makes no reference whatsoever to any constitutional questions, state or federal, (R. 44) nor does the Supplemental and Amended Petition in the trial court. (R. 47). Review by the Court of Appeal of the State of Louisiana is limited to the original record, pleadings and evidence. La. Const., Art. 7, Sec. 27. In their application to the Supreme Court of the State of Louisiana, petitioners raise no federal questions (R. 3 & 4). As the written reasons of the trial judge (R. 51) (App. A13 of Petition) of the Court of Appeal, First Circuit (R. 53 and App. A15 of Petition) and of the Supreme Court of the State of Louisiana (App. A23 of Petition) reveal, none of the courts below have been presented with, or passed upon the validity of any state or federal statute upon the ground of its being repugnant to the Constitution or laws of the United States, as written or as applied. It is well settled under the law of Louisiana that the Supreme Court or the Court of Appeal will not consider a constitutional question unless it has been raised by the pleadings. *Storall v. City of Monroe*, 199 La. 195, 210; *State v. Ross*, 144 La. 898, 915; *Mecrett v. Shreveport Municipal Fire and Police*

Civil Service Board, 72 So. 2d 519, 528 (Court of Appeal, Second Circuit)." As the Supreme Court of Louisiana stated in the *Stovall* case, *supra*:

> "All laws are presumed to be constitutional until the contrary is made clearly to appear and he who urges the unconstitutionality must specially plead its unconstitutionality. *Milton v. Lincoln Parish School Board*, 152 La. 761, 94 So. 386; *City of Shreveport v. Pedro*, 170 La. 351, 127 So. 865; *Ward v. Leche*, 189 La. 113, 179 So. 52."

It is axiomatic that any federal question, if in fact one exists, must be raised timely and in conformity with state practice and procedure. *Live Oak Water Users' Association v. Railroad Comm. of the State of California*, 269 U.S. 354, 357-58; *Hulbert v. Chicago*, 202 U.S. 275, 280; *Edelman v. California*, 344 U.S. 357, 358; *New York ex rel Bryant v. Zimmerman*, 278 U.S. 63, 67; *Stembridge v. Georgia*, 343 U.S. 541, 547; *Bailey v. Anderson*, 326 U.S. 203, 206. Only in the application to the Supreme Court of Louisiana was there a vague and general reference to "constitutional rights to equal protection and due process". (R. 3). Under the well settled jurisprudence of this Court "* * * it must be made to appear that some provision of the Federal, as distinguished from the state, Constitution was relied upon, and that such provision must be set forth." *New York Central & H. R. R. Co. v. New York*, 186 U.S. 269, 273. If the state constitution has a due process clause (which Louisiana does, La. Const., Art. 1, Sec. 2) a claim that due process has been violated will be deemed to relate to that clause. *Hoyt v. Scott*, 233 U.S. 653, 664-65. It is equally clear that if the claim is made that a state statute is "unconstitutional" or that it denies "constitutional rights", it will be assumed that reference is being made to the state constitution and rights thereunder rather than to the Federal Constitu-

tion. *New York ex rel. Bryant v. Zimmerman*, 278 U.S. 63, 67-8. At no time was any attack leveled at any particular statute of the State of Louisiana. Without question, if the validity, vel non, of any statute is to be properly placed at issue, it must be clearly identified. *Yazoo & M. V. R. Co. v. Adams*, 180 U.S. 41, 45 & 48.

Question Presented

There are no questions for review. The decision below is based upon adequate state grounds and no Federal questions have been timely or properly raised.

Statutes Involved

The pertinent provisions of the Louisiana Employment Security Law are set forth in the Appendix at p. 13, and of Article 7, Section 27 of the Louisiana Constitution at p. 13.

Statement of the Case.

This litigation involves consolidated cases of claimants, all of whom are members of Local 189-A, United Papermakers and Paperworkers, AFL-CIO, who were determined to be disqualified for unemployment compensation benefits because of a labor dispute at the Crown Zellerbach Mill Division in Bogalusa, Louisiana.

After an initial determination by the local employment office disqualifying the claimants from benefits, an administrative hearing was conducted by the Appeals Referee. (R. 33). By stipulation it was established that "a labor dispute began August 27th, 1961, on the premises of Crown Zellerbach Corporation, Mill Division, and as of this date it is still in active progress". (R. 13); that "the said labor dispute caused a work stoppage in production of the pulp and paper mill". (R. 13); that "as a result of this work stoppage, the appellants, Tom Brown,

et al. members of the United Papermakers and Paperworkers Local 189-A became unemployed". (R. 14); and that the "pamphlet entitled 'Labor Agreement also Plant Rules, Crown Zellerbach Corporation, Bogalusa Mill, Bogalusa, Louisiana, and United Paper Makers and Paper Workers, July 1, 1960-July 1, 1961' as being the contract under which Local 189-A worked * * * ". (R. 13); and that Article XI, Section 7, Constitution, United Papermakers and Paperworkers, AFL-CIO, provides as follows:

> "**Section 7.** Any person having accepted employment in any place in which a strike has been approved by the International Executive Board shall, by this act, expel himself from the membership in the International Union, and any person, whether member of the organization or otherwise, having accepted employment in any place in which a strike was approved by the International Executive Board, shall be entitled to membership in the International Union only on payment of a special initiation fee, which shall have the approval of the International Executive Board." (R. 42-3).

The Appeals Referee, in a well considered opinion, affirmed the Agency determination (R. 34-5), disqualifying the claimants from receiving benefits because of their interest and participation in the labor dispute. The action of the Appeals Referee was affirmed, with written reasons, by the unanimous decision of the Louisiana Board of Review. (R. 41-3). Further appeals were made to the District Court and the Court of Appeal (R. 50 and R. 53). In each case, the administrative determination was affirmed. A rehearing was denied by the Court of Appeal (R. 65) and the Supreme Court of Louisiana denied certiorari. It is of particular significance to note that in the written opinions rendered by the Appeals Referee, the Board of Review, the District Court, the Court of Appeal and the Supreme Court of Louisiana, the claimants were

denied benefits solely and exclusively because of their interest and participation in the labor dispute then in active progress, a determination of fact under state law.

Argument

Petitioners (the claimants below) attempt by this application to raise before this Court purported Federal questions, when none in fact exist and when at no stage in any of the proceedings below was any effort made to plead the unconstitutionality of any statute or to plead that the statute was in any manner being applied in an unconstitutional or discriminatory manner. At no place in the petition to this Court for Certiorari is there any specific reference to the record. The entire application is couched in general terms and broad conclusions of the petitioners, **which are totally unsupported by the record.** This is true not only as to the question of jurisdiction, which has previously been discussed, but as to the case on the merits. There are no specific references or citations to the record for the obvious reason that the record does not, and will not support the uncorroborated allegations contained in the petition before this Court.

Although counsel for opponents, Crown Zellerbach Corporation, are convinced that this Court is without jurisdiction, we will, briefly, address ourselves to the merits of the instant case. At every level of the Administrative proceeding and in the District Court and the Court of Appeal of Louisiana, there was an unqualified finding as a matter of fact and law that the claimants herein (petitioners) were participating and interested in the labor dispute. (R. 35, 43, 52, 56 & 58).

Louisiana Revised Statutes 23:1601 (4) provides as follows:

"§ 1601. Disqualification for benefits

An individual shall be disqualified for benefits:

* * * * * * *

(4) For any week with respect to which the administrator finds that his unemployment is due to a labor dispute which is in active progress at the factory, establishment, or other premises at which he is or was last employed; but such disqualification shall not apply if it is shown to the satisfaction of the administrator that he is not participating in or interested in the labor dispute which caused his unemployment * * *"

A reading of the above-quoted statute makes it clear that all employees are disqualified from benefits when unemployment is due to a labor dispute. It is therefore abundantly clear that the burden of proof is with the claimants to affirmatively establish lack of interest or participation. It will be noted that the claimant must show a lack of any interest. Under Act 97 of 1936, Louisiana, like most states, required that the claimant show that he was not "directly interested in" the labor dispute. By Act 181 of 1946, the word "directly" was deleted from the provisions of the Louisiana law, so that now the claimant must show that he is not **in any way** interested in the dispute which caused his unemployment before he is entitled to benefits. At every level of these proceedings, the claimants completely failed to show lack of participation or interest in the labor dispute, but, on the contrary, the record and the exhibits offered in evidence positively show numerous acts of participation and the interest of every member of Local 189-A in the labor dispute. The claimants refused to cross the picket line of their brother members of the United Papermakers and Paperworkers, AFL-CIO, and have, in fact, admitted that they were honor bound to respect this line. (R. 31).

The great majority of the courts throughout the nation have consistently held that the very act of refusing to cross a picket line constitutes participation in a labor dispute sufficient to disqualify the claimant from benefits. It is well settled that where there is no violence or danger to the body of the person refusing to cross a picket line, his failure to do so is participating in a labor dispute. One who voluntarily refuses to cross a picket line to go to his work is participating in work stoppage. *Meyer v. Industrial Commission of Missouri*, 224 S.W. (2d) 835; *American Brake Shoe Co. v. Annunzio, Director of Labor, et al*, 90 N.E. (2d) 83; *Langon, et al v. Administrator of Unemployment Compensation Act, et al*, 89 A. (2d) 558. It is therefore respectfully submitted that these grounds alone were more than sufficient to support a disqualification from benefits. The Court of Appeal of Louisiana, so found, as follows:

> "Picket lines were established by the members of Local 189 which it was the duty and obligation of appellants, as members of 189-A, to honor under penalty of expulsion from union membership and the imposition of monetary assessment. No attempt was made by any appellant to cross the picket lines established by the members of their brother local. Strike benefits were tendered claimants by the International and rejected, it being conceded, however, the proferred benefits were retained by International in escrow for payment to claimants in the event of final rejection and denial of their claims for unemployment benefits. No force, threats, intimidation or coercion was used, directed or employed against any claimants to prevent or discourage crossing of the picket lines established by the striking members of Local 189." (R. 54)

Turning now to the question of "interest" in the labor dispute, the record is replete with evidence of the

absolute and inextricable interest of the claimants. The Court of Appeal further found that:

> "It will be recalled both Locals 189 and 189-A are members of the same International Union, which parent union is conceded to be the bargaining agent for each said local insofar as the employer Crown Zellerbach is concerned. It must also be remembered the International is the agent of both locals and as such has been delegated full authority to represent said locals in their dealings with the employer in question. Their common membership in a single International demands and requires their acceptance of the directives of the International and obedience to its decrees or suffer the alternative awesome consequences of expulsion from union membership and unlimited monetary assessment as provided by Article XI, Section 7 of the union's constitution appearing of record. In addition their interest in the strike is manifest considering the proffer of strike benefits made by the International and the fact that said benefits are being held in escrow for payment to claimants upon their disqualification becoming final. Further, the testimony of appellant Brown is unequivocally to the effect that not only did claimants make no attempt to cross the picket lines established by Local 189 but also that Local 189-A officially recognized the picket lines and refused to cross them. Such action by claimants clearly constitutes participation in a labor dispute." (R. 57-8)

The International Union has made it clear that the members of Local 189-A are **eligible for strike benefits from the International Union** and **will receive them**. They are to this day being held in escrow. Certainly the members of this local must have an interest in the labor dispute if the International Union is willing to pay the same benefits to all of its members who work at the Boga-

lusa mill. This is understandable, since the Constitution of the International Union requires that all members of the Union must refuse to cross the picket line and refuse employment at any plant where the International has approved a strike.

Under the express terms of the Union constitution, all members of the Union are obligated to support strikes of the Union; and failing to do so are **expelled** from membership. Yet the members of Local 189-A would have this Court believe that they have no interest in the strike or the welfare of the Union. It would appear that the members of Local 189-A would like to eat their cake and have it too. In one breath they say that they are not on strike and should therefore receive unemployment compensation; but when they do not prevail on this, they will be looking to the International Union for srike benefits. It therefore becomes abundantly clear that petitioners' complaint, if any they have, is a matter to be resolved within the internal affairs of the Union, as the record reflects that neither the State of Louisiana nor the employer Crown Zellerbach Corporation exercised any control over the internal affairs of the two locals chartered by the International Union.

The provisions of the Louisiana law, disqualifying persons from unemployment compensation benefits if they are participating in or interested in a labor dispute, are not peculiar to Louisiana. Forty-one of the states have a labor dispute disqualification clause closely similar to that of Louisiana. See Labor Law Journal, February, 1962. The remaining states, which did not follow the proposed uniform legislation after which the Louisiana statute is patterned, disqualify all claimants who have lost their employment by reason of a labor dispute irre-

spective of whether they are interested or participating in the dispute. 41 Yale Law Journal 461, 463.

Under the express provisions of R.S. 23:1601 (4), a claimant must show that he is neither participating nor interested in the labor dispute. This the claimants in the instant case have totally failed to do. To the contrary, the record establishes, without any doubt, the actual and legal interest of these members of the United Papermakers and Paperworkers, which is "the union" in a single labor agreement. A dispute with "the union" necessarily involves all employees covered by the contract. To permit a part of the Union to strike while the remainder were allowed to draw unemployment compensation would in effect result in the state and the taxpayers subsidizing the strike. We cannot attribute to the Legislature an intent to finance strikes out of unemployment compensation funds. By failing to report for work and honoring the picket line of their fellow union members, the claimants have in fact participated in the labor dispute and the work stoppage.

This matter was first considered by the administrative agency, which determined that the claimants were disqualified from benefits. A full hearing was had before the appeals tribunal, where claimants were represented by counsel. The Board of Review reviewed the claims on appeal and unanimously affirmed the action of the appeals tribunal in denying benefits. The District Court, in well-considered written reasons, concluded that the claimants were disqualified from receiving unemployment compensation because of their interest and participation in the labor dispute as did the Court of Appeal and the Supreme Court of Louisiana. All of these opinions clearly show that no federal question was ever raised, considered

or necessary to the decision of the instant litigation. The decision rests solely upon adequate non-federal grounds.

Conclusion

For the foregoing reasons, it is respectfully submitted that this petition for a writ of certiorari should be denied.

Respectfully submitted,

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May , 1964

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APPENDIX

LOUISIANA CONSTITUTION

Article 7, Section 27:

"§ 27. **Trial on original record; rules of practice**

Section 27. All cases on appeal to the Courts of Appeal shall be tried on the original record, pleadings and evidence. The rules of practice regulating appeals to and proceedings in the Supreme Court shall apply to appeals and proceedings in the Courts of Appeal, so far as they may be applicable, until otherwise provided."

LOUISIANA REVISED STATUTES

La. Revised Statute 23:1601 (4):

"(4) For any week with respect to which the administrator finds that his unemployment is due to a labor dispute which is in active progress at the factory, establishment, or other premises at which he is, or was last employed; but such disqualification shall not apply if it is shown to the satisfaction of the administrator that he is not participating in or interested in the labor dispute which caused his unemployment. For the purposes of this Sub-section, if separate branches of work which are commonly conducted as separate businesses in separate premises, are conducted in separate departments of the same premises, each such department shall be deemed to be a separate factory, establishment or other premises."